

1 A prison official violates the Eighth Amendment if they are deliberately
2 indifferent to serious threats to the inmate's safety. *Farmer v. Brennan*, 511 U.S. 825,
3 832 (1994). As Defendant has conceded "'no one questions that [COVID-19] poses a
4 substantial risk of serious harm' to inmates" (Reply (ECF No. 41) (quoting *Plata v.*
5 *Newsom*, 445 F. Supp. 3d 557, 559 (N.D. Cal. 2020))); see also *Peyton v. Cates*, No.
6 1:22-cv-00151-JLT-EPG, 2022 WL 1430752, at *6 (E.D. Cal. May 5, 2022). The
7 questions at issue here, instead, are whether Defendant's actions or inactions
8 demonstrated deliberate indifference to that risk of harm, and whether Defendant in
9 fact caused Plaintiff harm. *Peyton*, 2022 WL 1430752, at *6.

10 Plaintiff has provided sufficient evidence to create a genuine dispute of fact as
11 to whether Defendant deliberately disregarded the risk of infecting Plaintiff with
12 Covid-19. In his Declaration, Plaintiff attests that despite exhibiting Covid-19
13 symptoms including coughing, runny nose, and red eyes, Defendant reported to work
14 at the prison and worked in close proximity to Plaintiff without wearing proper
15 protective equipment such as a face mask. (Opp'n, Ex. 1, Decl. of S. Lopez at 1-2.)
16 Plaintiff and Defendant worked together on Friday November 13, 2020, and Monday
17 through Wednesday November 16 through 18, 2020. (MSJ, Decl. of D. Santos, Exs. B
18 and D (ECF No. 32-6).) On November 17, 2020, Defendant took a Covid-19 test which
19 returned a positive result on either November 19 or 20, 2020, confirming that
20 Defendant was infected with Covid-19 as of at least November 17, 2020. (Decl. of S.
21 Lopez at 2; Opp'n., Ex. 3, Def.'s Resp. to Pl.'s Interrog. at 3.)

22 Defendant attempts to shield himself by emphasizing the Covid-19 protocols
23 put in place by Mule Creek State Prison and the fact that Defendant went on leave
24 after receiving a positive test result. However, these facts only go toward whether the
25 prison reasonably responded to a risk of harm, not whether Defendant personally
26 disregarded the risk of harm.¹ Plaintiff's core allegations are that Defendant flouted

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28 ¹ Defendant's reliance on the fact that Plaintiff receiving medical care after contracting Covid-19 is similarly misplaced because, again, it goes to the facility's response, not Defendant's.

1 the prison's protocols and disregarded the risk of exposing Plaintiff to Covid *before*
2 Defendant received a positive test result. While the prison required employees to
3 submit a health survey every day, Plaintiff attests in his Declaration that Defendant said
4 he was not reporting his symptoms because he did not want to be excluded from
5 work. (Decl. of S. Lopez at 1-2.) Plaintiff also attests that Defendant did not wear a
6 mask as required by the prison. (*Id.*) Further, even though there is no dispute that
7 Defendant was testing in accordance with the protocol and abstained from work as
8 soon as he received a positive result, California Department of Corrections and
9 Rehabilitation guidance from the time warned employees that they could have an
10 active infection and transmit the disease to others despite not yet having tested
11 positive for Covid-19. (See MSJ, Decl. of A. Altschuler, Ex. A (ECF No. 32-10) at 2-7.)
12 The same guidance warned prison employees of the risk of exposing another person
13 to Covid-19 by failing to wear a mask or practice physical distancing. (*Id.*)

14 These facts, if true, support an inference that Defendant knew or should have
15 known of the risk of infecting another person with Covid-19 even before receiving a
16 positive test, and the appropriate precautions to minimize that risk. “[K]nown
17 noncompliance with generally accepted guidelines for inmate health strongly
18 indicates deliberate indifference to a substantial risk of serious harm.” *Shank v.*
19 *Corizon Inc.*, No. CV-19-04638-PHX-ROS, 2020 WL 5628014, at *4 (D. Ariz. Sept. 2,
20 2020) (quoting *Hernandez v. Cnty. of Monterey*, 110 F. Supp. 3d 929, 943 (N.D. Cal.
21 2015)); see, e.g., *Ahlman v. Barnes*, 445 F. Supp. 3d 671, 688-91 (C.D. Cal. 2020)
22 (finding that the plaintiff had established both objective and subjective indifference
23 where the defendant failed to comply with Centers for Disease Control and Prevention
24 guidance despite being put on notice that the “failure to take certain precautionary
25 measures would result in an increase in the spread of infections”).

26 There is also sufficient evidence from which a reasonable jury could conclude it
27 was more likely than not that Defendant caused Plaintiff to contract Covid-19. As
28 stated above, Plaintiff and Defendant worked together in close proximity November

1 16 through 18, 2020, and Defendant was infected with Covid-19 as of at least
2 November 17, 2020. Plaintiff was moved into quarantine the same day Defendant's
3 Covid-19 test produced a positive result. (MSJ, Decl. of D. Santos (ECF No. 32-5) ¶ 2.)
4 Defendant admitted in response to Plaintiff's Requests for Admission that "on
5 November 19, 2020 all the inmates who were assigned at Mule Creek State Prison
6 Facility A canteen including Plaintiff where place (sic) on quarantine due to
7 [Defendant's] positive COVID-19 result." (Opp'n, Ex. 4 at 3-4.). During his deposition,
8 Plaintiff stated that he had started exhibiting Covid-19 symptoms shortly after being
9 placed in quarantine. (MSJ, Dep. of S. Lopez (ECF No. 32-13) at 8-10.) Plaintiff was
10 then tested for Covid-19 on November 23, 2020, which resulted in a positive result on
11 November 27, 2020. (*Id.* at 11; MSJ, Decl. of S. Lopez, Supervising Health Records
12 Tech, Ex. B (ECF No. 32-8).) Again, this means that Plaintiff was infected with Covid-19
13 as of at least November 23, 2020, five days after being exposed by Defendant on
14 November 17, 2020.

15 These allegations are more concrete and specific than the "generalized
16 allegations" found insufficient in cases cited by Defendant. For example, in *Crittenden*
17 *v. Diaz*, the plaintiff failed to allege who exposed him to Covid-19, when he tested
18 positive, and how the defendants were responsible. The court stated that if the
19 plaintiff had alleged "he was exposed to inmates who were known to be infected with
20 the virus shortly after [a prison transfer] and the prison failed to take safety measures
21 to reduce Plaintiff's risk of exposure, then it [would be] more likely than not that the
22 transfer was the cause." No. 21-05805 BLF (PR), 2021 WL 5564797, at *2 (N.D. Cal.
23 Nov. 29, 2021). Here Plaintiff has provided those specific circumstances, namely that
24 Defendant had an active Covid-19 infection while he was working in close proximity to
25 Plaintiff – thereby exposing Plaintiff to Covid-19 – and that Plaintiff contracted Covid-
26 19 shortly after the exposure despite being almost immediately quarantined.
27 Plaintiff's allegations similarly go beyond a general complaint that a prison official had
28 "not done enough to control the spread of COVID." *Richardson v. Allison*, No. 1:21-

1 CV-00070-BAK, 2022 WL 1409835, at *6 (E.D. Cal. May 4, 2022), *report and*
2 *recommendation adopted*, No. 1:21-CV-00070-JLT-BAK, 2022 WL 2080054 (E.D. Cal.
3 June 9, 2022). Rather, Plaintiff points to specific procedures that Defendant allegedly
4 failed to comply with to prevent infecting Plaintiff.

5 Based on Plaintiff's attestations and other evidence in the record, there are
6 genuine disputes of fact with regard to whether Defendant knew or should have
7 known that he had Covid-19 symptoms and risked transmitting the disease to Plaintiff,
8 and whether Defendant took reasonable and appropriate action in light of those
9 symptoms, or instead disregarded the risk of harm he posed to Plaintiff. There are
10 also sufficient facts from which a reasonable jury could find causation. Summary
11 judgement is therefore not appropriate.

12 Since the Magistrate Judge concluded that Defendant was entitled to summary
13 judgment on the merits of his Eighth Amendment deliberate indifference claim, the
14 Magistrate Judge did not have the opportunity to determine whether the Defendant is
15 entitled to qualified immunity. The Court will refer the matter back to the Magistrate
16 Judge to make that determination in the first instance.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. The findings and recommendations filed December 19, 2023 (ECF No. 45),
19 are rejected; and

20 2. The matter is referred back to the Magistrate Judge to determine whether
21 Defendant is entitled to qualified immunity, and whether summary judgement should
22 be granted on that basis.

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24 IT IS SO ORDERED.

25 Dated: March 26, 2024


26 Hon. Daniel J. Calabretta
27 UNITED STATES DISTRICT JUDGE
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